
(2013) 07 PAT CK 0006

In the Patna High Court

Case No : LPA No. 1005 of 2007 in CWJC No. 10811 of 2005

Vijay Kumar Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 16-07-2013

Acts Referred:

Citation : (2013) 4 PLJR 793

Hon'ble Judges : S. Nayer Hussain, J;Ahsanuddin Amanullah, J

Bench : Division Bench

Advocate : Bindhyachal Singh and Ram Binod Singh, for the Appellant; Rajesh Prasad Choudhary, for the Respondent

Judgement

S. Nayer Hussain, J.—This Letters Patent Appeal has been filed by the writ petitioner challenging order/judgment of the learned Single Judge dated 10.7.2007 by which CWJC No. 10811 of 2005 was dismissed. The aforesaid writ petition was filed by the petitioner-appellant challenging order of the Managing Director of Bihar State Co-operative Land Development Bank, Patna (hereinafter referred to as the Co-operative Bank for the sake of brevity) dated 3.12.2004 rejecting the representation of the petitioner dated 12.10.2004 for allowing him to continue work in the Cooperative Bank and to pay arrear of salary with effect from October 2000 and also for directing the authorities to take work from the petitioner and to pay the current and arrears of salaries from December, 2000.

2. The claim of the petitioner-appellant is that the petitioner was appointed as Assistant on daily wage basis vide order dated 9.6.1982 of the Chairman of the Co-operative Bank and thereafter he worked and much subsequently he was removed alongwith others as per general order of removal passed by the authorities concerned vide memo dated 9.11.2000.

3. Aggrieved by the said order the petitioner moved this Court vide CWJC No. 7570 of 2001 for directing the respondent-authorities not to give effect to the said order issued by the Administrator of the Co-operative Bank so far the

petitioners of that writ petition including the petitioner of this case were concerned and also for payment of salary with effect from December, 2000 to the petitioners. However, the said writ petition was disposed of by a Bench of this Court on 17.9.2004 directing the authorities to consider the grievance of the petitioners and dispose of the application of the petitioners by a reasoned order in accordance with law within a period of three months from the date of receipt/production of a copy of that order.

4. In compliance of the said order, the petitioner filed his representation before the Managing Director of the Co-operative Bank on 12.10.2004, but the said authority rejected the claim of the petitioner and dismissed the said representation vide order dated 3.12.2004. Against the said order, the abovementioned writ petition namely, CWJC No. 10811 of 2005 was filed by the petitioner which gave rise to the instant Letters Patent Appeal.

5. The ground taken by the writ petitioner-appellant challenging the impugned order of the authority concerned dated 3.12.2004 is that the said authority was trying to raise a frivolous plea of financial crunch which is not at all correct as on the one hand they are removing employees on the plea of financial crisis, but on the other hand they are making appointments on contractual basis which clearly proved that Co-operative Bank had the fund and the work to be done, but the petitioner was ignored although he had the first right.

6. It is also stated that the Bank is running in profit and the petitioner is a very old appointee of 1982 working as Assistant without any break and receiving scale of Assistant on the order of High Court with effect from 1.5.1982. Hence, instead of appointing fresh persons it was incumbent upon the authorities to continue with the petitioner. In this connection, the petitioner relied upon the salary sheet showing payments made to other employees.

7. The other ground taken by the writ petitioner-appellant is discrimination as according to him persons junior to the petitioner have been regularised such as Shailendra Kumar Singh and Arun Kumar Singh fully stated in the second supplementary affidavit of the petitioner. The writ petitioner-appellant also relied upon the principles of natural justice and equity claiming that the petitioner having spent his prime period in the service of the Cooperative Bank it was not proper for the authorities to oust him in such a manner.

8. On the other hand, learned counsel for the respondents opposed the contentions of learned counsel for the petitioner and stated that the grounds taken by the writ petitioner-appellant have been very rightly and fully considered by the learned Single Judge which is in accordance with law and hence it does not require any interference.

9. After hearing learned counsel for the parties and after perusing the materials on record as well as the impugned order of the learned Single Judge it is quite apparent that the petitioner had earlier moved this Court vide CWJC No. 6415 of 1991 alongwith others for their regularization as according to him he was

continuously working on the post of Assistant in the Co-operative Bank without any break since 1982 and even persons junior to him had been regularised. When the said writ petition was considered by a Division Bench of this Court on 19.8.1992 the Court held that the petitioners of that writ petition were not regular appointees, rather they were back door entrants who cannot be given such benefits. Learned counsel for the petitioners pleaded that those petitioners did not seek any relief from the Court for making their appointment substantive and permanent. He invoked the principle of equal pay for equal work and submitted that the prayer for regularization in the writ petition must be limited to be granted in the same pay scale and other benefits which was admissible to other employees holding those petitioners to be entitled to the pay scale admissible to the Assistant working in the Co-operative Bank who had been appointed on regular basis. It was made clear in the said order that grant of such relief to the petitioners shall not be construed to mean that the Court had expressed any opinion on the question as to whether they were validly appointed.

10. In the said circumstances, when the petitioner himself withdrew his claim before a Bench of this Court for making his appointment substantive or permanent, his service remained as casual and purely on temporary basis irrespective of the pay he received. Hence, the Co-operative Bank was fully entitled to remove him from service at any point of time according to its own wisdom and given circumstances and it cannot be said to be arbitrary or illegal.

11. Furthermore, it transpires that the petitioner-appellant had been removed as far back as in November, 2000 and the reason given was financial crunch which could not be disproved by the petitioner nor can he claim any benefit from contract appointment made by the Co-operative Bank in the year 2007 as the gap between the two was seven years and in the meantime the condition of the Cooperative Bank might have improved.

12. In any view of the matter, regular or continuous appointment creates heavier burden upon the institution than contractual appointment in which work, time and cost are limited. It may be mentioned that undisputed claim of the Co-operative Bank is that before 2007 it did not make any appointment for about 15 years i.e. from 1992. In the said circumstances, this Court does not find any merit in this Letters Patent Appeal which is accordingly dismissed.